

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	Case No: 1:15-CR-293-TSE
v.	)	
	)	<b><u>UNDER SEAL</u></b>
WAYNE SHELBY SIMMONS,	)	
	)	
Defendant.	)	

**GOVERNMENT'S MOTION TO SEAL INDICTMENT  
AND ARREST WARRANT PURSUANT TO LOCAL RULE 49(B)**

The United States, by and through undersigned counsel, pursuant to Local Rule 49(B) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, asks for an order to seal the indictment and arrest warrant in this matter until the time of the defendant's arrest.

**I. REASONS FOR SEALING (Local Rule 49(B)(1))**

1. The FBI has been investigating the defendant for engaging in a number of fraud schemes stemming from his false claim that he spent nearly thirty years working as a clandestine officer for the CIA. The indictment alleges, among other things, that the defendant used this false claim in attempts to obtain a security clearance and that he twice used the claim to successfully obtain work as a defense contractor, including to get deployed to Afghanistan as an intelligence advisor to senior U.S. military officials.

2. The defendant has a significant criminal history, including convictions for a crime of violence and firearms offenses, and is believed to have had an ongoing association with firearms notwithstanding those felony convictions. The defendant, moreover, has a history of acting in an aggressive manner, and is likely aware of the imminent nature of the charges in this case. Based

on all of these factors, the government believes that premature disclosure of the charges against the defendant may jeopardize the government's ability to locate and arrest the defendant without incident.

## **II. REFERENCES TO GOVERNING CASE LAW (Local Rule 49(B)(2))**

3. The Court has the inherent power to seal the requested documents. See United States v. Wuagneux, 683 F.2d 1343, 1351 (11<sup>th</sup> Cir. 1982); State of Arizona v. Maypenny, 672 F.2d 761, 765 (9<sup>th</sup> Cir. 1982); Times Mirror Company v. United States, 873 F.2d 1210 (9<sup>th</sup> Cir. 1989); see also Shea v. Gabriel, 520 F.2d 879 (1<sup>st</sup> Cir. 1975); United States v. Hubbard, 650 F.2d 293 (D.C. Cir. 1980); In re Braughton, 520 F.2d 765, 766 (9<sup>th</sup> Cir. 1975). "The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests." In re Knight Pub. Co., 743 F.2d 231, 235 (4<sup>th</sup> Cir. 1984). Sealing the indictment and arrest warrant is appropriate where there is a substantial probability that the release of the sealed documents would severely compromise the government's on-going investigation. See e.g. In re Search Warrant for Secretarial Area Outside Office of Gunn, 855 F.2d 569, 574 (8<sup>th</sup> Cir. 1988); Matter of Eye Care Physicians of America, 100 F.3d 514, 518 (7<sup>th</sup> Cir. 1996); Matter of Flower Aviation of Kansas, Inc., 789 F. Supp. 366 (D. Kan. 1992).

## **III. PERIOD OF TIME GOVERNMENT SEEKS TO HAVE MATTER REMAIN UNDER SEAL (Local Rule 49(B)(3))**

4. The sealed materials would need to remain sealed only until the defendant is arrested. Upon the defendant's arrest, pursuant to Local Rule 49(B)(3), the sealed materials will be automatically unsealed and handled as such.

5. The United States has considered alternatives less drastic than sealing and has found none that would suffice to protect this investigation. The United States will move to unseal

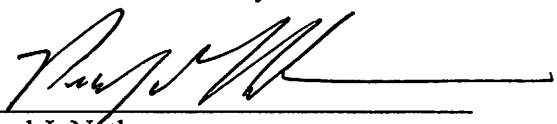
the documents before they are set to become automatically unsealed if it determines that circumstances warrant such action.

WHEREFORE, the United States respectfully requests that the indictment and arrest warrant, and this motion to seal and proposed order be sealed until the defendant is arrested.

Respectfully submitted,

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United States Attorney

By:



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